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**AUG 23 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 23, 1993

OUR FILE NO.  
0693-102-63

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Re: Docket No. 93-136  
RM-8161

Dear Mr. Caton:

Transmitted herewith on behalf of Vero Beach FM Radio Partnership are an original and four copies of its Reply Comments with respect to the counterproposal that has been proposed by Okeechobee Broadcasters, Inc., Sunshine Broadcasting, Inc., and Jupiter Broadcasting Corporation.

If there are any questions concerning this submission, please contact this office directly.

Sincerely,



John M. Pelkey

JMP/lgs

Enclosure

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Before The

**Federal Communications Commission****AUG 23 1993**

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In The Matter Of )

)   
 Amendment of Section 73.202(b) )   
 Table of Allotments, )   
 FM Broadcast Stations, )   
 (Key Colony Beach, Key Largo, )   
 and Marathon, Florida )Docket No. 93-136

RM-8161

TO: Chief, Allocations Branch  
Mass Media Bureau**Reply Comments of  
Vero Beach FM Radio Partnership**

Vero Beach FM Radio Partnership ("Vero Beach FM"), through counsel and pursuant to Sections 1.415 and 1.420 of the Commission's rules, hereby files its Reply Comments with respect to the counterproposal submitted in the above-referenced proceeding by Okeechobee Broadcasters, Inc. ("Okeechobee"); Sunshine Broadcasting, Inc. ("Sunshine"), and Jupiter Broadcasting Corporation ("JBC") (referred to herein as the "Joint Counterproposal"). For the reasons set forth below, Vero Beach FM supports the Joint Counterproposal and asks the Commission to amend the Table of Allotments in accordance with that counterproposal.

**I. HISTORY OF THE RULEMAKING**

On December 17, 1992, Spanish Broadcasting System of Florida, Inc. ("Spanish"), petitioned the Commission to amend the Table of Allotments in such a manner as to specify changed frequencies for stations operating in Key Largo, Marathon, and Key Colony Beach,

Florida. Spanish, the licensee of the Key Largo station, WZMQ(FM), proposes that the channel used by WZMQ(FM) be changed from channel 280C2 to channel 292C2. According to the Petition for Rulemaking, the change in the Key Largo station's channel is necessitated by alleged receiver-induced third order intermodulation ("RITOI") interference being experienced in the vicinity of the WZMQ(FM) tower. That tower is shared with WKLG(FM). Operating from the shared tower, WZMQ(FM) and WKLG(FM) allegedly are causing RITOI interference to WCTH(FM), which operates from a transmitter site located approximately 19 kilometers from the WZMQ(FM)/WKLG(FM) tower. To effectuate its change, Spanish proposes that the reference coordinates of N24° 57' 20"; W80° 34' 50" be established as the reference coordinates for the Key Largo allocation. These reference coordinates are approximately 20 kilometers from WZMQ(FM)'s currently-licensed facilities.

By Notice of Proposed Rulemaking and Order to Show Cause, released June 3, 1993,<sup>1</sup> the Commission specified July 26, 1993 as the date for the submission of counterproposals and August 10, 1993 as the date for the submission of reply comments. On July 26, 1993, Okeechobee, Sunshine and JBC timely filed their Joint Counterproposal. Whereas the Spanish proposal had not proposed any upgrades for any of the three stations affected by its proposal and had made no assertions that its proposal would result in increased coverage, the Joint Counterproposal would permit three stations to upgrade their channels and would permit, according to Exhibit F to the engineering statement submitted as part of the Joint Counterproposal, the three upgraded stations to serve an additional 1.3 million people. Of immediate

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<sup>1</sup> *Key Colony Beach, Key Largo and Marathon, Florida*, 8 FCC Rcd 3886 (1993).

importance to Vero Beach FM is the Joint Counterproposal's plan to substitute channel 292C3 for channel 258A at Jupiter, Florida.

On August 6, 1993, the Commission provided public notice of the Joint Counterproposal and specified that reply comments to the Joint Counterproposal could be filed within fifteen days.<sup>2</sup>

## II. **THE VERO BEACH FM ALLOCATION**

Vero Beach FM is the permittee of WWDO(FM) in Vero Beach FM, Florida. WWDO(FM) is authorized to operate on channel 259C2. That channel was allocated to Vero Beach as a result of a rulemaking that culminated in the filing of competing applications in 1988.<sup>3</sup> In order to effectuate that allocation, the Commission imposed site restrictions that severely limited the area within which the Vero Beach facility could be located. Further hindering the placement of the Vero Beach site was the fact that much of the area within which the site could be located was located either at the end of a runway or on parkland. Complicating the site placement situation yet further was the fact that, shortly before the effective date of the rulemaking allotting channel 259C2 to Vero Beach, the Commission modified the Table of Allotments to change the channel of station WKSJ-FM in Jupiter, Florida, from channel 296A to channel 258A.<sup>4</sup>

The Commission's decision to permit FM stations to use a contour protection scheme to overcome short-spacing somewhat enlarged the potential area within which the Vero Beach applicants could propose

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<sup>2</sup> The fifteenth day occurred on a Saturday. As a result, pursuant to Section 1.4(j) of the Commission's rules, August 23, 1993 is the due date for the submission of reply comments. These Reply Comments are thus timely filed.

<sup>3</sup> *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), *review denied*, 4 FCC Rcd 2184 (1989).

<sup>4</sup> *See American Indian Broadcast Group, Inc.*, 5 FCC Rcd 7087, 7089 (1990).

construction of their facilities. Even then, however, the proposed facilities were required to operate at a lower height above average terrain ("HAAT") than would otherwise be necessary in order to protect other stations, most notably channel 258 in Jupiter.

The facilities authorized for use by Vero Beach FM are a case in point. Taking advantage of the contour protection scheme established in Section 73.215 of the Commission's rules, WWDO(FM) specified the use of a transmitter site in Sebastian, Florida. In order to protect channel 258 in Jupiter, however, WWDO(FM) was required to specify a HAAT of only 98 meters.

Adoption of the Joint Counterproposal would permit WWDO(FM) to raise its HAAT to 150 meters from 98 meters because WWDO(FM) would no longer be required to protect channel 258 in Jupiter. This increase in height would permit WWDO(FM) to serve a substantially increased area. As is explained in the attached "Technical Exhibit" of Bromo Communications, Inc., operation of WWDO(FM) at an HAAT of 150 meters would permit WWDO(FM) to serve an additional 66,479 persons--a twenty percent increase over the coverage that can be achieved by the presently authorized facility. In addition, the allocation of channel 292C3 in lieu of channel 258A at Jupiter would permit WWDO(FM) to move its facilities so as to decrease its coverage of over-water areas and increase its coverage of land areas.<sup>5</sup>

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<sup>5</sup> If the Joint Counterproposal were adopted, WWDO(FM) would file an application seeking an increase in its HAAT and would construct those facilities promptly upon their authorization.

**III. The Alleged Intermodulation Interference Being Experienced By WCTH(FM) Can Be Eliminated Without The Channel Changes Proposed By Spanish.**

Spanish claims that its proposed channel changes are required in order to eliminate RITOI interference allegedly being experienced by WCTH(FM). Spanish fails to recognize, however, that resolution of the RITOI problem can be accomplished in a much simpler fashion than requiring three stations to undergo channel changes.

The reference coordinates specified by Spanish for operation on Channel 292C2 define a site located more than 20 kilometers from Spanish's licensed facilities. Those reference coordinates are also located less than 1 kilometer from WCTH(FM)'s facility. Normally, RITOI problems can be overcome either by a change in channel or by placing greater geographic separation between the two stations that are causing the RITOI interference. In the present case, Spanish proposes to do both. There is no need to do so. As is pointed out in the attached Technical Exhibit, separation of the two stations yielding the interfering product by more than 20 kilometers should eliminate any RITOI interference to WCTH(FM).<sup>6</sup>

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<sup>6</sup> It should be noted that Section V-B of the FCC Form 301 requires applicants to take responsibility for any RITOI interference caused by the location of the applicant's transmitter within 10 kilometers of any other station's transmitter. Implicitly, the form recognizes that it is unlikely that RITOI interference will occur if the separation is greater than 10 kilometers. In the present case, the separation would be more than twice that.

Generally, RITOI interference will occur in that area where the stations yielding the interfering product have a very strong signal and the station on whose frequency the product is occurring has a relatively weak signal. Spanish itself recognizes this fact in the statement of Charles R. Dreher, attached to Spanish's July 26, 1993 Comments, wherein Mr. Dreher acknowledges that the interference to WCTH(FM) occurs within a mile or less from the tower that is being used jointly by WZMQ(FM) and WKLG(FM). The WZMQ(FM)/WKLG(FM) tower is currently located approximately 19 kilometers from the WCTH(FM) transmitter site. The present situation thus presents an almost classic example of circumstances under which RITOI interference *can* come into being. Merely by moving its transmitter on its presently-authorized frequency, Key Largo could unilaterally eliminate the RITOI problem.

Moreover, if it were deemed essential that Spanish change frequencies to eliminate the RITOI interference, this change could be effectuated while at the same time permitting the changes proposed in the Joint Counterproposal. Specifically, as is explained in the attached Technical Exhibit, Channel 288C2 could be substituted for Channel 280C2 at Key Largo, Florida, at the reference coordinates proposed by Spanish. No change would be required at Marathon.<sup>7</sup> The changes proposed in the Joint Counterproposal could all then be effectuated.<sup>8</sup>

#### IV. **Conclusion**

Vero Beach supports the adoption of the Joint Counterproposal advanced by Okeechobee, Sunshine and JBC in this proceeding. Not only would the Joint Counterproposal permit the increased coverage indicated by the proponents of the Joint Counterproposal, but it would also permit WWDO(FM) the opportunity to improve its coverage so as to serve an additional 66,479 persons. Balanced against the substantial improvement in service that could be achieved if the Joint Counterproposal were adopted is the fact that Spanish does not even claim that it would be able to achieve additional coverage through adoption of its proposal. While Spanish asserts that the adoption of its proposal is necessary to overcome RITOI interference being inflicted on WCTH(FM), the simple fact of the matter is that such interference can be

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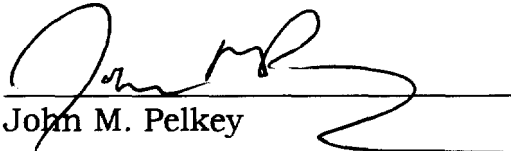
<sup>7</sup> Marathon would still be free to pursue an upgrade to Channel C3 on its present frequency.

<sup>8</sup> Vero Beach is not setting forth this option as a counterproposal to the Spanish proposal. Instead, it is merely suggesting an alternative way of accomplishing the results that are sought by Spanish and the Joint Counterproposal. In fact, as has been pointed out above, there is no need to substitute channels at Key Largo given the fact that the RITOI interference can be eliminated without a channel substitution.

more simply remedied simply by Spanish's moving of its facilities, on its current channel, to a site closer to its proposed reference coordinates.

Respectfully submitted,

**VERO BEACH FM PARTNERSHIP**

By:   
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Its Attorney

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August 23, 1993



## CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered\*, to the following:

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Policy and Rules Division  
Mass Media Bureau  
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A handwritten signature in cursive script, reading "Lucy J. Santiago", is written over a horizontal line.

August 23, 1993